

2001

# State of Utah, Utah Board of Pardons v. Joseph B. Schultz : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH, :  
Plaintiff/Appellee, : Case No. 20010908-CA  
UTAH BOARD OF PARDONS :  
Intervener/Appellee :  
vs. :  
JOSEPH B. SCHULTZ, : Priority No. 15  
Defendant/Appellant. :

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BRIEF OF APPELLEES

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On Appeal from the Judgment  
Of the Second Judicial District Court  
In and for Weber County, State of Utah  
Honorable Stanton M. Taylor  
District Court Judge

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**FILED**  
Utah Court of Appeals

NO ORAL ARGUMENT OR PUBLISHED OPINION REQUESTED

MAR 21 2002

Paulette Stagg  
Clerk of the Court

**IN THE UTAH COURT OF APPEALS**

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<b>STATE OF UTAH,</b>	:	
<b>Plaintiff/Appellee,</b>	:	<b>Case No. 20010908-CA</b>
 <b>UTAH BOARD OF PARDONS</b>	 :	
<b>Intervener/Appellee</b>		
<b>vs.</b>	:	
 <b>JOSEPH B. SCHULTZ,</b>	 :	 <b>Priority No. 15</b>
<b>Defendant/Appellant.</b>	:	

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**IN THE UTAH COURT OF APPEALS**

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<b>STATE OF UTAH,</b>	<b>:</b>	<b>BRIEF OF APPELLEE</b>
<b>Plaintiff/Appellee,</b>	<b>:</b>	
<b>UTAH BOARD OF PARDONS</b>	<b>:</b>	
<b>Intervener/Appellee</b>		
<b>vs.</b>		
<b>JOSEPH B. SCHULTZ,</b>		
<b>Defendant/Appellant.</b>		<b>Case No. 20010908-CA</b>

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**ISSUES ON APPEAL AND STANDARD OF REVIEW**

1. Did the trial court correctly conclude that the Utah Board of Pardons' (Board's) first restitution order was entered while Schultz was under the Board's jurisdiction, and was therefore valid?
2. Did the trial court correctly conclude that the Board followed the statutory requirements of Utah Code Ann. §§ 77-27-5 and 76-3-201 in setting its restitution order?
2. Did the trial court correctly conclude that the subsequent docketing of the Board's restitution order created an enforceable judgment?
3. Did the trial court correctly conclude that the victim could enforce a valid

civil judgment through a writ of garnishment?

The standard of review for conclusions of law, is correctness. *State v. Riggs*, 1999 UT App 271, ¶ 7.

### **RELEVANT PROVISIONS**

Any relevant statutes or rules will be quoted in the text.

### **STATEMENT OF THE CASE**

In some instances, two Board “orders” for restitution are necessary. The first Board order of restitution may occur where in compliance with Utah Code §77-27-5(5), the Board orders that an offender must pay restitution, as the Board is statutorily authorized to do. The second restitution order occurs where an offender’s sentence terminates with the offender still owing restitution. With regard to this second restitution order, the Board is statutorily mandated to forward this restitution order to the sentencing court for entry on the judgment docket. *See* Utah Code Ann. § 77-27-6(4). In the instant case, both restitution orders were issued by the Board.

On October 17, 1983, Schultz was found guilty but mentally ill of Attempted Criminal Homicide, Attempted Murder in the Second Degree against Holly Schultz and against David McDonald. *See* Addendum A, “Judgment, Sentence and Commitment.” (R. 1). He was sentenced as to each of these crimes to “not less than one (1) year nor



more than fifteen (15) years at the Utah State Prison.” *Id.* He was also found guilty but mentally ill of aggravated assault, with a sentence “not to exceed five (5) years at the Utah State Prison.” *Id.* All three (3) counts were to run concurrently. *Id.*

On April 28, 1989, an Order of Parole was signed providing for Schultz’s conditional parole release on October 26, 1993. *See* Addendum B, “Order of Parole.” (R. 30). On September 23, 1993, the Board held a Special Attention Review, deciding that as a condition of parole Schultz must “pay restitution of TBD.” *See* Addendum C, “1993 Special Attention Review.” (R. 32). On November 30, 1993, Schultz signed a parole agreement including as a special condition that he would “pay restitution of \$TBD.” *See* Addendum D, “Parole Agreement.” (R. 33). Schultz’s initials appear next to this special condition of parole, signifying his agreement to pay restitution. *Id.*

In February of 1995 a restitution investigation was conducted, recommending that the Board amend Schultz’s parole agreement to include \$14,132.00 for restitution. *See* Addendum E, “Progress/Violation Report.” (R. 95). Schultz refused to agree to any restitution payment, necessitating a Restitution Hearing which was held on October 23, 1996. *See* Addendum F, “Restitution Hearing Results.” (R. 63). On October 24, 1996, a warrant for Schultz’s arrest was issued based on his failure to pay restitution. *See* Addendum G, Warrant.” (R. 102). On October 24, 1996, the Board ordered that Schultz

be “placed under arrest and released on his Own Recognizance pending a Parole Violation Hearing . . . ” *See* Addendum F, “Restitution Hearing Results.” (R.63). On October 25, 1996, the Board wrote a letter to Schultz indicating that the hearing had been held specifically regarding the restitution issue, with the decision that a full hearing would be held before the Board at a later date. *See* Addendum H, “Board Letter.” (R. 77). At that hearing the Board pulled Schultz’s October 25, 1996 statutory termination date, pending the resolution of the restitution issue. *Id.*

An order based on the Special Attention Hearing was signed August 5, 1997, with the Board ordering Schultz’s sentence and parole to terminate effective August 4, 1997, and that a “[r]equest for restitution of \$3798.43 is to be forwarded to the Sentencing Court for a Civil Judgment.” *See* Addendum I, “1997 Special Attention Hearing.” (R. 48). This was the Board’s final decision regarding its hearing held on April 22, 1997. *Id.*

Since Schultz was being terminated with restitution still owing, a second Board restitution “order” was signed on September 8, 1997 and forwarded to the Second District Court, in compliance with Utah Code Ann. §77-27-6(4). *See* Addendum J, “Second Board Order.” (R. 98). The Second District Court entered this order on the docket on September 17, 1997. *Id.*

## **SUMMARY OF THE ARGUMENT**

**The Board's first restitution order was entered while Schultz was under the Board's jurisdiction, and was therefore valid.** In some instances, such as those presented here, two Board restitution orders are necessary. The Board's first restitution order was entered pursuant to a Special Attention Hearing held April 22, 1997, indicating the "[r]equest for restitution of \$3,798.43 is to be forwarded to the Sentencing Court for a Civil Judgment. Final decision of the hearing held on 04/22/1997." *See* Addendum I, "1997 Special Attention Hearing." This order also terminated Schultz's sentence and parole effective 08/04/1997, and was signed August 5, 1997. Even assuming this order was not valid until signed, both the order for restitution and the order of termination would be valid as of August 5, 1997, while Schultz was still under the Board's jurisdiction. In the alternative, in 1993 the Board ordered restitution as a condition of parole, in an amount to be determined. This order could also be seen as the Board's restitution order. The restitution amount was merely determined by the 1997 Special Attention Review, which then related back to the original 1993 order. Under either analysis, the Board had jurisdiction over Schultz when the restitution order was entered.

**The Board complied with all applicable statutes in setting restitution.** Utah Code Ann. § 77-27-5(1) provides statutory authority for the Board to order restitution in

all felony cases. Schultz's was a felony case, to which none of the enumerated exceptions applied, making a Board order of restitution statutorily authorized. *See* Utah Code Ann. § 77-27-5(1). Pursuant to Section 77-27-5(1)(c), a full hearing before the Board or the Board's appointed examiner was conducted.

The Board also complied with Utah Code Ann. § 76-3-201, as mandated by Utah Code Ann. § 77-27-5(5). The restitution set was for pecuniary damages to the victim, Ms. Everton, who suffered such damages as the result of Schultz's criminal activities. *See* Utah Code Ann. § 76-3-201(1)(d) and (e)(i). The restitution was for special damages, not general damages, which included medical expenses and destroyed property. *See* Utah Code Ann. § 76-3-201(1)(c).

Finally, Schultz's financial resources, his ability to pay, and the rehabilitative effect of the payment of restitution were also considered. *See* Utah Code Ann. § 77-3-201(8)(c)(i)-(iv). A record of the reasons for the Board's determination of a \$3,798.43 restitution order is found in the Board's Progress/Violation Report and the restitution document. *See* Addenda E and L.

**The trial court's docketing of the Board's valid restitution order created an enforceable judgment.** As noted, two restitution orders were necessary in this case. The second Board restitution order also fully complied with statute. Utah Code Ann. § 77-27-

6(4), provides that the Board “shall forward a restitution order to the sentencing court to be entered on the judgment docket.” This was done. The fact that the Board signed this order after Schultz’s termination had absolutely no bearing on its validity. The plain language of Section 77-27-6 indicates that this “restitution order” shall issue “upon” termination, and that it shall be forwarded to the sentencing court “upon” termination. *See* Utah Code Ann. § 77-27-6(4). Upon Schultz’s termination, the order was issued and forwarded. Pursuant to Section 77-27-6(4), and based on the Board’s valid restitution order, the trial court correctly entered this restitution amount as a civil judgment.

**The victim can enforce a valid civil judgment through a writ of garnishment.**

The Board’s second restitution order forwarded to the Second District Court states that Schultz “shall pay \$3,798.43 in restitution to: Holly O. Everton.” Utah Code Ann. § 77-27-6(4) mandates that this order shall be referred to the sentencing court for civil collection remedies, with its entry constituting a lien, and that it “is subject to the same rules as a judgment for money in a civil judgment.”

Garnishment is a civil collection remedy. *See* Utah R. Civ. P. 64D. The judgment is in favor of Ms. Everton, the victim, making the civil collection remedy of garnishment available to her.

## ARGUMENT

### **I. THE TRIAL COURT CORRECTLY CONCLUDED THAT THE BOARD'S FIRST RESTITUTION ORDER WAS ENTERED WHILE SCHULTZ WAS UNDER THE BOARD'S JURISDICTION, AND WAS THEREFORE VALID.**

As noted earlier, in some instances, such as those presented here, two Board restitution orders are required. The Board's first restitution order was entered pursuant to a Special Attention Hearing held April 22, 1997. The final order from that hearing ordered "[t]erminate sentence and parole effective 08/04/1997. OTHER: Request for restitution of \$3798.43 is to be forwarded to the Sentencing Court for a Civil Judgement. Final decision of the hearing held on 04/22/1997." *See* Addendum I, "1997 Special Attention Hearing."

Schultz cites this document as "ordering" the termination of his sentence. The same document, however, also clearly "orders" restitution in the amount of \$3798.43. It is an "order" for restitution, just as it is an "order" for the termination of Schultz's sentence and parole.<sup>1</sup>

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<sup>1</sup>Schultz argues that he did not receive the Board's Second Order, which was forwarded to the Second District Court. Even if this assertion was accepted, the 1997 Special Attention Hearing document provided Schultz with notice of the amount of restitution, as well as of the fact that it would be forwarded to the court for a civil judgment. *See* Addendum I, "1997 Special Attention Hearing."

While the order was not signed by the Board until August 5, 1997, this does not alter the fact that restitution was ordered by the Board while Schultz was still under the Board's jurisdiction. If it is argued that Schultz's sentence was terminated prior to the actual signing of the order, then restitution was also ordered prior to the order's signing. In the alternative, if the Board's order was not valid until it was signed, then Schultz was not terminated until the order was signed on August 5, 1997, and restitution was also ordered as of August 5. In either case, restitution was ordered while Schultz was under the Board's jurisdiction.

Moreover, Schultz signed a parole agreement on November 30, 1993 indicating that as a special condition of parole he would pay restitution in an amount to be determined. *See* Addendum D, "Parole Agreement." This parole agreement could also be seen as the Board's order of restitution. The Board clearly ordered Schultz to pay restitution as a condition of parole, and Schultz unequivocally agreed to pay such in an amount to be determined. *Id.* The Special Attention Hearing order merely determined the amount of restitution, which related back to the 1993 parole order to pay restitution. Under either analysis, the Board had jurisdiction over Schultz when this restitution order was entered.

**II. THE TRIAL COURT CORRECTLY CONCLUDED THAT THE BOARD COMPLIED WITH UTAH CODE ANN. §§ 77-27-5 AND 76-3-201 IN SETTING ITS RESTITUTION ORDER.**

**A. The Board complied with Section 77-27-5.**

The Board's first order of restitution complied with Utah Code Ann. §77-27-5(1), which provides the Board statutory authority to order restitution in all felony cases "except treason or impeachment or as otherwise limited by law." Schultz's was a felony case, and none of the enumerated exceptions applied. Accordingly, the Board's restitution order was statutorily authorized. Additionally, the Utah Supreme Court in *Monson v. Carver*, held that the Board has constitutional authority to order restitution as a condition of parole,<sup>2</sup> 928 P.2d 1017, 1023 (Utah 1996), making the Board's restitution order both constitutionally and statutorily authorized.

Acting under this authority the Board imposed payment of restitution as a condition of Schultz's 1993 parole. *See* Addendum D, "Parole Agreement." Schultz failed to comply with this mandated parol condition, and his parole was revoked prior to its statutory expiration. *See* Utah Code Ann. §77-27-11(1) (parole revocation statutorily

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<sup>2</sup>*Monson* addressed the pre-1992 amendment to the Utah constitution, article VII, section 12, which at that time did not itemize restitution as a Board power. On January 1, 1993 this section was rewritten to include restitution. *See* Utah Const. art. VII, section 12 (1992).



allowed where an offender is found to have violated any condition of parole); Addendum G, “Warrant.” Moreover, the hearing officer at Schultz’s Restitution Hearing told Schultz that his vehement refusal to pay restitution was indicative of his unwillingness to take responsibility for his action, which of itself was a parole violation. *See* Addendum K, “Transcript of Restitution Hearing.” (R. 64-75).

Schultz did not meet the statutory requirement of being violation free, as he made no effort to pay restitution, adamantly denying at every turn that he owed any restitution, and incensed at the thought that he might be required to pay such. *See* Addendum E, “Progress/Violation Report” (R. 95); Addendum K, “Transcript of Restitution Hearing” (R. 64-75). Having violated this condition of parole, Schultz was not eligible for a statutory termination of his sentence. *See* Utah Code Ann. § 76-3-202(1). Schultz clearly remained under the Board’s jurisdiction, which in turn allowed for the valid imposition of a Board restitution order. *Id.* *See also Monson*, 928 P.2d at 1023.

Admittedly, it took some time for a restitution order to be entered in this case. Schultz refused to sign a waiver regarding restitution, slowing the process and requiring the Board to hold a Restitution Hearing. This hearing, however, was held prior to the statutory expiration of Schultz’s sentence, and complied fully with Utah Code Ann. § 77-27-5(1)(c), which requires a full hearing to be held before the Board, or before the

Board's appointed examiner in open session.

**B. The Board complied with Utah Code Ann. § 76-3-201.**

Utah Code Ann. § 77-27-5(5) provides that “. . . the board shall consider whether the persons have made or are prepared to make restitutions ascertained in accordance with the standards and procedures of Section 76-3-201 . . .” Section 76-3-201's standards and procedures define restitution as “full, partial, or nominal payment for pecuniary damages to a victim.” Utah Code Ann. § 76-3-201(1)(d). A victim is defined as “any person the court determines has suffered pecuniary damages as a result of the defendant's criminal activities,” Utah Code Ann. § 76-3-201(1)(e)(i), and pecuniary damages are defined as special damages that could be recovered against the defendant in a civil action arising out of the criminal activity. Utah Code Ann. § 76-3-201(1)(c). Such damages include payment for property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses. *Id.* Finally, the Board is to consider the financial resources of the defendant, his ability to pay, and the rehabilitative effect of payment of restitution. Utah Code Ann. § 77-3-201(8)(c)(i)-(iv).

The Board complied fully with each of these statutory guidelines. The Board arrived at a final restitution figure of \$3,798.43 after consideration of each of the above-referenced factors, based on information provided from a variety of sources. In 1995 the

Board received a “Progress/Violation Report” from Schultz’s supervising parole agent, itemizing the pecuniary damages resulting from Schultz’s criminal activity of shooting Ms. Schultz-Everton in the face. *See* Addendum E, “Progress/Violation Report.” This report calculated a total restitution amount of \$14, 130.00 based on statutory criteria.<sup>3</sup> *Id.* The victim, however, apparently requested relief in a lesser amount of \$3,798.43; the amount the Board finally decided upon. *See* Addendum I, “1997 Special Attention Hearing.” This figure was itemized as including a medical card from Social Services, eye prosthetics cleaning and polishing, medication for related injuries, medical bills for related treatment, the loss of a 1978 Pinto Wagon, and estimated eye prosthetic replacement.<sup>4</sup> *See* Addendum L, “Restitution.” (R. 106).

This restitution is full, partial, or nominal payment for pecuniary damages to the

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<sup>3</sup>This report explains Schultz’s victim was left with “loss of memory, the loss of a thumb and emotional stress and trauma” after Schultz shot Ms. Schultz-Everton with a rifle at point blank range. *See* Addendum E, “Progress/Violation Report.” The costs are itemized as \$1500.00 for a glass eye, cleaning the eye yearly for \$35.00, medication tests for \$300.00, and yearly medication for \$80.00, which were then calculated over the victim’s estimated life-span. *Id.* The report also indicates that Schultz’s financial resources, his ability to pay restitution, and the rehabilitative effect of restitution were also considered. *Id.*

<sup>4</sup>The Progress/Violation Report, in conjunction with the Restitution document, meet the requirement that there is a record of the reasons for the Board’s decision. *See* Monson, 928 P.2d. at 1028.

victim, Ms. Schultz-Everton, who suffered pecuniary damages as a result of Schultz's criminal activity. *See* Utah Code Ann. §§ 76-3-201(1)(d) and (e)(i). These pecuniary damages are not general damages. They are special damages related to Schultz's criminal activity. *See* Utah Code Ann. § 76-3-201(1)(b) and (c). Moreover, Schultz's ability to pay, his financial resources, and the rehabilitative effect of restitution were also considered, as exemplified by the 1995 report. *See* Addendum E, "Progress/Violation Report." The Board's restitution order fully complied with Utah Code § 76-3-201.

### **III. THE TRIAL COURT CORRECTLY CONCLUDED THAT THE SUBSEQUENT DOCKETING OF THE RESTITUTION ORDER CREATED AN ENFORCEABLE JUDGMENT**

After the Board's first restitution order, a second restitution order was necessary since Schultz, even though terminated, still owed restitution. In compliance with Utah Code § 77-27-6(4), which provides that the Board "shall forward a *restitution order* to the sentencing court to be entered on the judgment docket," this second "restitution order" was signed by the Board on September 8, 1997, and forwarded to the Second District Court. *See* Addendum J, "Second Board Order."

The fact that this order was signed after Schultz's termination has no bearing on its validity. The plain language of Section 77-27-6 indicates that this "restitution order" shall issue "upon" termination, and that it shall be forwarded to the sentencing court "upon"

termination. *See* Utah Code § 77-27-6(4). Nothing indicates this order must be executed “prior” to termination while an offender is under the Board’s jurisdiction. It was entirely proper that this second order was signed by the Board on September 8, 1997, after Schultz’s termination.

Based on this valid restitution order, which fully complied with controlling statutory mandates, the trial court correctly entered this restitution amount as a civil judgment. *See* Utah Code Ann. § 77-27-6(4). Schultz was aware that he owed restitution as early as 1993 when he signed a parole agreement initialing payment of restitution as a condition of his parole. The fact that he independently determined that he owed nothing in restitution, that he was “livid” and “incensed” at the thought of paying such, and that he asserted at his Restitution Hearing that “I am paying no restitution regardless of the outcome of this hearing,” does not negate the validity of either Board restitution order, or of the resulting civil judgment entry. *See* Addendum E, “Progress /Violation Report;” Addendum K, “Transcript of Restitution Hearing.”

#### **IV. THE TRIAL COURT CORRECTLY CONCLUDED THAT THE VICTIM COULD ENFORCE A VALID CIVIL JUDGMENT THROUGH A WRIT OF GARNISHMENT.**

The Board’s second restitution order which was forwarded to the trial court pursuant to Utah Code Ann. § 77-27-6(4) states that the defendant, Joseph B. Schultz,

“shall pay \$3,798.43 in restitution to: Holly O. Everton.” Utah Code Ann. § 77-27-6(4) states that this order “shall be referred to the district court for *civil collection remedies*.” (Emphasis added). Moreover, “[t]he entry shall constitute *a lien and is subject to the same rules as a judgment for money in a civil judgment*.” *Id.* (Emphasis added). The plain language of this statute provides the victim, Holly O. Everton, with civil collection remedies, upon a lien which is subject to “the same rules as a judgment for money in a civil judgment.”

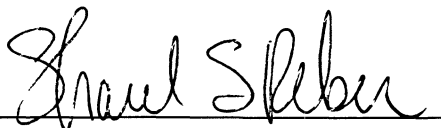
Garnishment is a civil collection remedy. *See* Utah R. Civ. P. 64D. “A writ of garnishment is available in aid of execution to satisfy a money judgment or other order requiring the payment of money.” Utah R. Civ. P. 64D(a)(ii). The judgment is in favor of the victim, Holly O. Everton. Accordingly, the civil collection remedy of garnishment is available to Ms. Everton.

### CONCLUSION

The trial court’s order dismissing Schultz’s Motion to Set Aside the Judgment should be affirmed. Since this case deals with claims addressed by established law, the Board does not request oral argument or a published opinion.

RESPECTFULLY SUBMITTED THIS 21<sup>st</sup> of March 2002.

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**CERTIFICATE OF MAILING**

On 21<sup>st</sup> March 2002, I mailed by U.S. Mail, postage prepaid, two copies of  
this ***BRIEF OF APPELLEE*** to:

J. Thomas Bowen  
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# ADDENDA



# ADDENDUM A

“Judgment, Sentence and  
Commitment”

IN THE DISTRICT COURT OF WEBER COUNTY, ~~STATE OF UTAH~~ *jt*

STATE OF UTAH	(	JUDGMENT, SENTENCE, AND
	)	COMMITMENT TO UTAH STATE
vs	(	HOSPITAL AND PRISON
JOSEPH B. SCHULTZ,	)	
Defendant.	(	No. 15274

- - - - -

COUNT I. The defendant having been found GUILTY BUT MENTALLY ILL by a jury, of the offense of ATTEMPTED CRIMINAL HOMICIDE, Attempted Murder in the Second Degree, against HOLLY SCHULTZ, being now present in court and ready for sentence, is now adjudicated GUILTY BUT MENTALLY ILL of the above offense and is now sentenced to NOT LESS THAN ONE (1) YEAR NOR MORE THAN FIFTEEN (15) YEARS AT THE UTAH STATE PRISON.

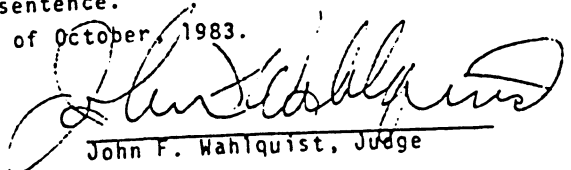
COUNT II. The defendant having been found GUILTY BUT MENTALLY ILL by a jury, of the offense of ATTEMPTED CRIMINAL HOMICIDE, Attempted Murder in the Second Degree, against DAVID McDONALD, being now present in court and ready for sentence, is now adjudicated GUILTY BUT MENTALLY ILL of the above offense and is now sentenced to NOT LESS THAN ONE (1) YEAR NOR MORE THAN FIFTEEN (15) YEARS AT THE UTAH STATE PRISON.

COUNT III. The defendant having been found GUILTY BUT MENTALLY ILL by a jury, of the offense of AGGRAVATED ASSAULT, a Third Degree Felony, being now present in court and ready for sentence, is now adjudicated GUILTY BUT MENTALLY ILL of the above offense and is now sentenced to NOT TO EXCEED FIVE (5) YEARS AT THE UTAH STATE PRISON.

All three (3) counts running concurrently.

The defendant is remanded into custody of the Sheriff of this county, for delivery to the Utah State Hospital, Provo, Utah, for a period not to exceed SIX (6) MONTHS without benefit of a review hearing as provided by 77-35-21.5(5). Upon discharge from the State Hospital the defendant is to be transferred to the Utah State Prison to serve the balance of his sentence.

Dated this 17th day of October, 1983.

  
John F. Wahlquist, Judge

# ADDENDUM B

“Order of Parole”

EXHIBIT B

MEMBERS

L W BOYDEN  
RA J. PALACIOS  
L WEBSTER



PAUL W SHEFFIELD  
Administrator

BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

ORDER OF PAROLE  
UTAH STATE OBSCIS NO. 00012599  
UTAH STATE PRISON NO. 17875  
IN THE MATTER OF THE APPLICATION OF SCHULTZ, JOSEPH B

This matter of application for parole, termination of sentence, or expiration of sentence having come before the Utah State Board of Pardons in a regularly scheduled hearing on the 28th day of April, 1989, and the applicant appearing in person or having waived in writing the right to appearance and the Board having heard the case, issues the following order:

It is hereby ordered that SCHULTZ, JOSEPH B be paroled from the punishment and sentence heretofore imposed upon him/her by a judge of the Second District Court in and for the County of Weber for the crime(s) of CRIMINAL HOMICIDE, 2nd degree felony, Expiration 10/16/98; CRIMINAL HOMICIDE, 2nd degree felony, Expiration 10/16/98; AGGRAVATED ASSAULT, 3rd degree felony, Expiration 10/16/88.

The parole shall not become effective until 26th day of October, 1993. The applicant agrees to the conditions of parole and evidences his agreement by signing the parole agreement. The parole agreement or contract shall be administered by duly authorized agents of the Utah State Department of Corrections for the Utah State Board of Pardons.

It is further ordered that if and in the event the above named applicant shall be guilty of any infractions of the rules and regulations of the Utah State Prison or shall fail or refuse to perform duties as assigned by the Utah State Prison or is found to be in violation of any other law of the State of Utah prior to the effective date of said parole, then this Order of Parole is revoked and becomes null and void.

Dated this 28th day of April, 1989.

By Order of the Board of Pardons of the State of Utah, I have this 1st day of May, 1989, reduced its decision in this matter to writing and hereby affix my signature as Administrator for and on behalf of the State of Utah, Board of Pardons.

  
PAUL W. SHEFFIELD, Administrator

# ADDENDUM C

“1993 Special Attention  
Review”



## BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

UTAH STATE OBSCIS NO. 12593

Consideration of the Status of SCHULTZ, JOSEPH B PRISON NO. 17875

The above-entitled matter came on for consideration before the ~~Utah State Board~~ of Pardons on the 23rd day of September, 1993, for:

### SPECIAL ATTENTION REVIEW

After a review of the submitted information and good cause appearing, the Board makes the following decision and order:

### RESULTS

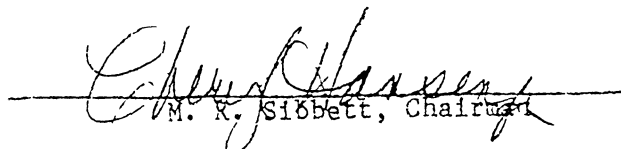
Amend parole agreement to add: CCC until stable.

- 1 Successfully complete Mental Health Therapy.
- 2 Take medications if prescribed.
- 3 Pay restitution of TBD.
- 4 Have no contact with the victim.
- 5 Enter CCC until stabilized.

No	Crime	Sent	Case No.	Judge	Expiration
1	CRIMINAL HOMICIDE	1-15	15274	WAHLQUIST	10/16/1993
2	CRIMINAL HOMICIDE	1-15	15274	WAHLQUIST	10/16/1993

This decision is subject to review and revocation by the Board of Pardons at any time until actual release from custody.

By order of the Board of Pardons of the State of Utah, I have this date 23rd day of September, 1993, affixed my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.

  
M. R. Sibbett, Chairman

# ADDENDUM D

## “Parole Agreement”

EXHIBIT E

Michael O. Leavitt  
Governor  
Michael R. Sibbett  
Chairman



Members  
Donald E. Blanchard  
H.L. (Pete) Haun  
Curtis L. Garner  
Cheryl Hansen

BEFORE THE BOARD OF PARDONS AND PAROLE OF THE STATE OF UTAH

PAROLE AGREEMENT

Name: SCHULTZ, JOSEPH B OBSCIS No. 12599 USP No. 17875

I agree to be directed and supervised by agents of the Utah State Department of Corrections and will abide the following conditions of my parole:

1. RELEASE: On the day of my release from the institution or confinement, I will report to my assigned Parole Agent, unless otherwise approved in writing from the parole office.
2. ABSCONDING: I will not abscond from parole supervision:
  - A. Reporting: I will report as directed by the Department of Corrections
  - B. Residence: I will establish and reside at a residence of record and will not change my residence without first obtaining permission from my parole agent.
  - C. Leaving the State: I will not leave my state of residence, even briefly, or any other state to which I am released or transferred without prior written permission from my parole agent.
3. CONDUCT: I will obey all State, Federal and municipal laws. If arrested, cited or questioned by a peace officer, I will notify my parole agent within 48 hours of the incident.
4. HOME VISITS: I will permit visits to my place of residence by agents of Adult Probation and Parole for the purpose of ensuring compliance with the conditions of my parole. I will not interfere with requirement; i.e. having vicious dogs, perimeter security doors, refusing to open the door, etc.
5. SEARCHES: I will permit agents of Adult Probation and Parole to search my person, residence, vehicle or any other property under my control, without a warrant, at any time, day or night, upon reasonable suspicion to ensure compliance with the conditions of my parole.
6. WEAPONS: I will not own, possess, have under my control or in my custody any explosives, firearms or dangerous weapons as defined in Utah Code Annotated, Section 76-10-501, as amended.
7. EMPLOYMENT: Unless otherwise authorized by my parole agent, I will seek, obtain and maintain verifiable, lawful full-time employment (32 hours per week minimum) as approved by my parole agent. I will notify my parole agent of any change in employment within 48 hours.
8. ASSOCIATION: I will not knowingly associate with any person who is involved in criminal activity or who has been convicted of a felony, without approval from my parole agent.
9. CHEMICAL ANALYSIS: I will submit to test of my breath, body fluids or hair to ensure compliance with my parole agreement.
10. TRUTHFULNESS: I will be cooperative, compliant and truthful in all my dealings with Adult Probation and Parole.
11. SPECIAL CONDITIONS: I will:
  1. Successfully complete Mental Health Therapy.
  2. Take medications if prescribed.
  3. Pay restitution of \$1BD CASE#.
  4. Have no contact with the victim.
  5. Enter CCC until stabilized.

I have read, understand and agree to be bound by this agreement. If I violate any of the conditions of this agreement, the Board of Pardons may revoke my parole or the Department of Corrections may take other appropriate action against me.

11-30-93  
DATE

SIGNED:

*Joseph B. Schultz*

USP NO: 17875

11/30/93  
DATE

WITNESSED BY:

*Jeffrey Mackess*

AUTHORIZED BY:

*Cheryl Hansen*

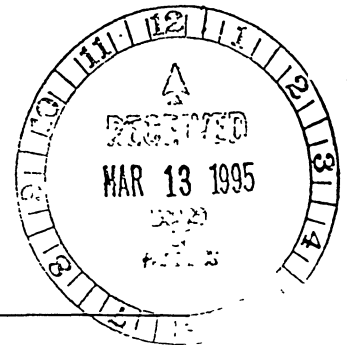
BOARD OF PARDONS



# ADDENDUM E

## “Progress/Violation Report”

UTAH DEPARTMENT OF CORRECTIONS  
FIELD OPERATIONS, CENTERS REGION  
BONNEVILLE COMMUNITY CORRECTIONAL CENTER  
SUPERVISING AGENT, MIKE PRIDDY



PROGRESS/VIOLATION REPORT

NAME: SCHULTZ, Joseph DATE: 02/17/95  
DATE RECEIVED ON PAROLE: 10/26/93 USP NO.: 17875  
ADDRESS: 765 North 900 West #303, SLC OBSCIS NO: 00012599  
EMPLOYMENT: Atwood Products OFFENSE: Criminal Homicide

COMMENTS:

restitution investigation was conducted for Mr. SCHULTZ. Due to the heinous situation and circumstances surrounding this case, it was quite extensive. Mr. SCHULTZ had shot his wife with a 30-06 rifle at point blank range. This incident left Mrs. Schultz-Everton with loss of memory, the loss of a thumb and emotional stress and trauma. Mr. SCHULTZ is expected to terminate from parole on 10/26/96. The offense occurred on 3/08/93. This restitution is calculated during the above period. A glass eye, that costs \$1500.00, this glass eye has to be replaced once every seven years. The eye must be cleaned yearly at the cost of \$35.00 per year. Medication tests total of \$300.00. Mrs. Schultz' medication cost per year is \$80.00. This medication is for Thyroid problems directly caused from the damage to the victim's brain. According to the Health Department, the average life span for women in 1990's is 79.6 years. The victim is now 47 years of age. She will be expected to live for 20-25 more years. Using the time between 1983 when the crime was committed and 2025 is a total of 42 years of life. The above restitution included for this period will be as follows: The glass eye replacement for 42 years divided by 7 equals \$1,000.00, the glass cleaning for 42 years times \$35.00 will be \$1,470.00, medication tests costs \$300.00. Thyroid medication for 42 years times \$80.00 will be \$3,360.00 for a total restitution of \$14,130.00. For Mr. SCHULTZ to pay off this debt with 22 months left on parole, the monthly payments would have to be approximately \$228.64. There is a question to Mr. SCHULTZ'S ability to pay this monthly amount as he has paid nothing towards restitution as of this date. He is working 40 hours a week earning \$7.60 an hour. Mr. SCHULTZ was advised of this restitution amount and became quite livid over the fact that he has to pay for his ex-wife's medical costs at this time. He felt he may request a restitution hearing, yet he has not filed any formal paperwork at this time. He did leave the office from his monthly visit infuriated and was enroute to his lawyer's office. The victim was covered by Mr. Schultz's medical insurance and was unable to recollect who she was covered by at the time of the crime. Mr. Schultz was unable to provide any information at this time due to his incensed frame of mind.

# ADDENDUM F

## “Restitution Hearing Results”



## BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

UTAH STATE OBSCIS NO. 12590

deration of the Status of SCHULTZ, JOSEPH B PRISON NO. 17875

bove-entitled matter came on for consideration before the Utah State Board  
rdons on the 24th day of October, 1996, for:

### RESTITUTION HEARING

a review of the submitted information and good cause appearing, the Board  
the following decision and order:

### RESULTS

Other. Warrant #96-1229 issued on  
10/24/1996 to toll supervision date as of  
10/24/1996. Mr. Schultz is to be placed  
under arrest and released on his Own Recognizance  
pending a Parole Violation Hearing  
before the Board of Pardons  
and to provide appropriate time for  
further legal research.  
Final decision of the hearing held on  
10/23/1996.

Charge	Sent. Case No.	Judge	Expiration
CRIMINAL HOMICIDE	1-15 15274	WAHLQUIST	10/16/1998
CRIMINAL HOMICIDE	1 15 15274	WAHLQUIST	10/16/1998

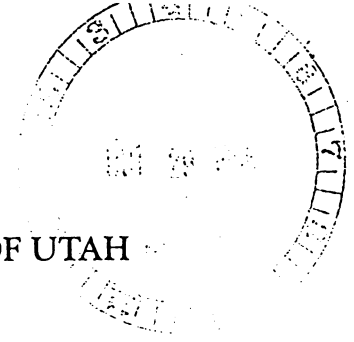
Decision is subject to review and modification by the Board of Pardons at  
time until actual release from custody.

order of the Board of Pardons of the State of Utah, I have this date  
day of October, 1996, affixed my signature as Chairman for and  
ward of the State of Utah, Board of Pardons:

*Don Blanchard*  
M. R. Sibbett, Chairman

# ADDENDUM G

“Warrant”



BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

IN THE MATTER OF

WARRANT FOR ARREST

Joseph B. Shultz

# 96-1229

USP# 17875

THE BOARD OF PARDONS OF THE STATE OF UTAH

To any Peace Officer, State of Utah, Greetings:

A certified Warrant Request having been made before the Board by The Board's own motion.  
and it appears from the Warrant Request or Affidavit filed with the Warrant Request that  
there is reason to believe that the parole violation(s) of 1. Failure to pay Restitution.

has/have been committed, and that the person named above has committed it/them; and

Whereas the person named above was conditionally released by the Board of Pardons of  
the State of Utah upon parole on the 26th day of October, 19 93;

YOU ARE THEREFORE COMMANDED to arrest the above-named parolee and to cause  
him or her to be detained and returned to actual custody pending a determination whether  
there is probable cause to believe that the parolee has violated the conditions of his or her parole.

Dated this 24th day of October, 19 96.

Don Blanchard

Member Utah State Board of Pardons

# ADDENDUM H

“Board Letter”



# State of Utah

DEPARTMENT OF CORRECTIONS  
FIELD OPERATIONS - REGION III  
Raymond H. Wahl, Director  
Don Blackburn, Regional Administrator

Michael O. Leavitt  
Governor

O. Lane McCotter  
Executive Director

October 25, 1996

JOSEPH SCHULTZ, USP # 17875  
764 North 900 West, Apt. #303  
Salt Lake City, Utah 84116

Dear Mr. Schultz:

This letter is to inform you of the results of a hearing conducted by the Utah Board of Pardons and Parole on October 24, 1996.

The Board of Pardons and Parole conducted a hearing specifically on your restitution issue and decided to have a full hearing before the Utah Board of Pardons at a later date.

At that hearing, the Board of Pardons and Parole pulled your October 25, 1996 termination date until this restitution issue is resolved before them.

Because of this, it is important that you contact this office via telephone to set up an appointment with this agent concerning the above mentioned matter. You must contact this office by November 5, 1996.

You must also remember your parole termination date has been pulled and you are still on parole and therefore, subject to the terms and conditions of your Parole Agreement. Thank you for your quick response to this letter. Please contact me at 239-2204.

Respectfully,

DONALD BLAIR  
Parole Agent

g:\bvreeken





# ADDENDUM I

“1997 Special Attention  
Hearing”



## BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

UTAH STATE OBSCIS NO. 12599

Consideration of the Status of SCHULTZ, JOSEPH B PRISON NO. 1737

The above-entitled matter came on for consideration before the Utah State Board of Pardons on the 5th day of August, 1997, for:

### SPECIAL ATTENTION HEARING

After a review of the submitted information and good cause appearing, the Board makes the following decision and order:

### RESULTS

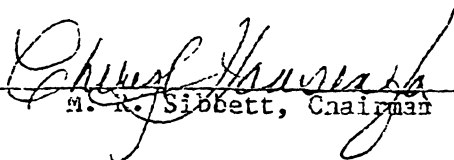
Terminate sentence and parole effective  
03/04/1997. OTHER: Request for restitution  
of \$3793.43 is to be forwarded to the  
Sentencing Court for a Civil Judgment.  
Final decision of the hearing held on  
04/22/1997.

PAROLE OFFICER: DAVID BOSCARENO/REGION III/SLC.

No. Crime	Sent Case No.	Judge	Expiration
1 CRIMINAL HOMICIDE	1-15 15274	WAHLQUIST	10/16/1998
2 CRIMINAL HOMICIDE	1-15 15274	WAHLQUIST	10/16/1998

This decision is subject to review and modification by the Board of Pardons at any time until actual release from custody.

By order of the Board of Pardons of the State of Utah, I have this date  
2nd day of August, 1997, affixed my signature as Chairman for and  
on behalf of the State of Utah, Board of Pardons.

  
M. R. Sibbett, Chairman

# ADDENDUM J

“Second Board Order”

Michael O. Leavitt  
Governor  
Michael R. Sibbett  
Chairman



Members  
Donald E. Blanchard  
H. L. (Pete) Haun  
Curtis L. Garner  
Cheryl Hansen

## BEFORE THE BOARD OF PARDONS AND PAROLE OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff,

v

Joseph B. Schultz

Defendant,

1997 SEP 16 12:01  
ORDER OF RESTITUTION  
DISTRICT COURT

Case No. 15294

John F. Wahlquist, Judge

831915274

The Board of Pardons and Parole, having reviewed its file, finds that Joseph B. Schultz has outstanding restitution, that has not been paid, in the amount of \$3,798.43 case No. 15294.

Wherefore, the Board makes the following

### ORDER OF RESTITUTION

1. Defendant shall pay \$3,798.43 in restitution to Holly O. Everton.

This order shall be forwarded to the District Court which sentenced Mr. Joseph B. Schultz pursuant to Utah Code Annotated, section 77-27-6(4) and shall constitute a lien against him when entered on the court's docket.

IT IS SO ORDERED, this 8th day of September, 1997.

BY THE BOARD

Michael R. Sibbett, Chairman  
Utah Board of Pardons and Parole

IT IS SO ORDERED, this 17 day of Sept, 1997

BY THE COURT:

MAILING CERTIFICATE

This is to certify that on the 9th day of Sept, 1997, I sent a true and correct copy of the foregoing Order of Restitution, postage pre-paid, to:

John F. Wahlquist, Judge  
Second District Court  
2549 Washington Boulevard  
Ogden, Utah 84401

Stephane Hickman

CERTIFICATE OF MAILING

This is to certify that on the 9th day of September, 1997, I sent a true and correct copy of the foregoing order of restitution, postage pre-paid, to :

Joseph B. Schultz, USP#17875  
Address unknown

Stephanie Hickman

# ADDENDUM K

“Transcript of Restitution  
Hearing”

EXHIBIT G

STATE OF UTAH  
BOARD OF PARDONS AND PAROLE

---

In the matter of	:	USP #178675
	:	
JOSEPH SCHULTZ	:	

---

RESTITUTION HEARING

HELD OCTOBER 23, 1996

BEFORE

LEWIS ESCOBAR, HEARING OFFICER

Transcriber:  
CAROLYN ERICKSON, CSR

---

REGIONAL REPORTING SERVICES  
652 Jefferson Cove  
Sandy, Utah 84070  
801-567-1157



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P R O C E E D I N G S

HEARING OFFICER: Good morning. I'm Lewis Escobar, the hearing officer for the Board of Pardons. This is a restitution hearing for Joseph V. Schultz, USP #17875.

Is that you, sir?

MR. SCHULTZ: Yes, that's correct.

HEARING OFFICER: Mr. Schultz, I'll be taking testimony from you. Can you please raise your right hand?

JOSEPH SCHULTZ

having first been duly sworn, testified upon oath as follows:

MR. BOWEN: Mr. Escobar, for the record I wondered if you received the communication we sent?

HEARING OFFICER: Yes. I was going to mention that. We do have a letter submitted by J. Thomas Bowen and this is, we received a fax on October 22nd of 1996 at 23:10 hours and we have what appears to be an original copy of the fax, hand-delivered on October 23rd of 1996.

The reason for this restitution hearing is, first of all, is at the request of Mr. Schultz, based on the fact that he was asked to sign a waiver to the truth of the restitution claimed by the victims of \$3,798.42.

EXAMINATION

BY HEARING OFFICER:

1 Q Is that correct, sir?

2 A Yes.

3 HEARING OFFICER: In this letter submitted by Mr.  
4 Bowen there's some issues that he has raised.

5 And I assume that is you, Mr. Bowen?

6 MR. BOWEN: That is correct, yes.

7 HEARING OFFICER: One of the issues is that  
8 there's no legal basis for this and a request that this  
9 hearing be stricken, is that correct?

10 MR. BOWEN: That is correct.

11 HEARING OFFICER: I will rule on this motion to  
12 strike this hearing as you request, Mr. Bowen, based on the  
13 fact that we do have legal basis. Mr. Schultz is on parole  
14 and his legislative termination will not occur until  
15 October 25th of 1996. Based on that I will rule to  
16 continue with this hearing. Based on that we'll go ahead.

17 Q (BY HEARING OFFICER) Mr. Schultz, what is your  
18 contention as to why, is it your belief that you do not owe  
19 this restitution?

20 A I believe I do not owe this restitution.

21 Q Go ahead and tell me why you don't think that you  
22 owe the money.

23 A I believe I don't owe this restitution because  
24 there was no restitution ordered by the court. There's no  
25 provisions, I took my case to a jury trial. I was

1 convicted by a jury. I was sentenced by the judge. There  
2 was no restitution ordered. Had the whole Board of Pardons  
3 been standing next to the judge at the time of my  
4 sentencing, they would not have been able to implement  
5 restitution. They weren't given the authority to implement  
6 restitution until 1986. That precedes my conviction by  
7 three years. I believe cases adjudicated before the Board  
8 of Pardons was given the authority to impose restitution do  
9 not apply in this case.

10 HEARING OFFICER: Okay, any other reasons?

11 MR. BOWEN: If I might interject, we've raised a  
12 number of issues in the letter. We believe also this  
13 constitutes double jeopardy, particularly citing the  
14 hearing officer of the United States versus Myers which is  
15 an Eleventh Circuit case and the United States versus  
16 Gazelle which is a Tenth Circuit case and the United States  
17 versus Halper which is a United States Supreme Court case,  
18 all of which have held that the double jeopardy clause bars  
19 the imposition of a civil penalty subsequent to criminal  
20 prosecution and punishment. We believe that it's beyond  
21 the jurisdiction of the Board of Pardons, particularly as  
22 Mr. Schultz has said, because no restitution has ever been  
23 awarded in this particular case. It wasn't ordered by the  
24 trial judge and has not previously been ordered by the  
25 Board and it's only because of the intervention of Governor

1 Leavitt's office that this matter has come forward.

2 HEARING OFFICER: Close to that, let me ask you  
3 first of all what the interjection is from Mr. Leavitt,  
4 from the governor? I'm not aware of it.

5 MR. BOWEN: It's my understanding that one of the  
6 victims in this case, for personal reasons, wrote a letter  
7 to Governor Leavitt and ask Governor Leavitt's office to  
8 investigate the fact that no restitution had be ordered or  
9 to order Mr. Schultz to pay restitution. The reason for  
10 that is because of an on-going problem with child support  
11 and that's simply the reason.

12 HEARING OFFICER: To my knowledge the governor's  
13 office received a, I don't know whether it was a letter or  
14 a telephone call or whatever, and they, not having any  
15 knowledge of this matter, referred it back to the  
16 Department of Corrections. The Department of Corrections,  
17 and I'm talking about the administration part, not being  
18 familiar with this, they deferred to the Board of Pardons  
19 and submitted the claim from the victim. The victim, this  
20 is my assumption, I don't know if this is the case, the  
21 victim forwarded this claim to the governor and the  
22 governor deferred to the Department of Corrections. The  
23 Department of Corrections sent it to us.

24 I don't know that you are aware of the claim or  
25 have seen any.

1 MR. BOWEN: We have not seen the claim but any  
2 claim, it's my understanding without seeing the claim  
3 though is that it has to be at least 13 years old. There  
4 were several remedies that were available to her that she  
5 never took and so we've got some serious statute of  
6 limitation problems and again we're back on the question of  
7 whether or not a civil penalty is now attempting to be  
8 imposed upon Mr. Schultz as punishment for his crime.

9 HEARING OFFICER: Right. Okay, to answer that,  
10 the Board granted Mr. Schultz a conditional parole. One of  
11 the conditions of parole was that he pay restitution to be  
12 determined. Mr. Schultz accepted those conditions on  
13 October 26th of 1993 and on November 30th, 1993, he signed  
14 such acceptance being witnessed by Mr. Jeffery Cloud, a  
15 parole officer, on November 30th of 1993. Based on that  
16 there's an expectation from the Board of Pardons that Mr.  
17 Schultz agreed to pay restitution. However--

18 THE WITNESS: I don't believe that constitutes an  
19 agreement. Mr. Bowen has been on a retainer for years  
20 waiting for the Board of Pardons to set an amount of  
21 restitution. Thirty-five hours before my sentence and  
22 parole is due to terminate you've come up with this. I  
23 have done nothing to violate my parole up to this point.  
24 At anytime in there, you've had eight years to set this  
25 amount. At anytime had you set this amount this would have

1     been going to court.

2                 MR. BOWEN:  Let me also say that there was a  
3     termination hearing that was held by the Board on the third  
4     of September of this year and the results of that were that  
5     he be terminated from his sentence effective 10/25/96.  
6     There is no requirement in that termination hearing that  
7     any restitution be paid and there's been no change of  
8     circumstances since that time.  Any facts, any evidence was  
9     available to the Board at that time and they didn't impose  
10    restitution.

11                HEARING OFFICER:  Very well.  Still the fact  
12    remains that the restitution was to be determined.  Mr.  
13    Schultz accepted those conditions.  Now the question is if  
14    the Board has the power or authority to impose restitution  
15    on cases where the court have not.  And that is the  
16    question that you have raised here in your letter.  I'm not  
17    going to dwell into that.  I will tell you that this matter  
18    is under review by the appellant court at this point, so  
19    until this is decided I can't tell you whether the Board  
20    has or doesn't have.

21                MR. BOWEN:  I represent two of the parties that  
22    are on appeal.

23                HEARING OFFICER:  So you are familiar with it.

24                MR. BOWEN:  I am.

25                HEARING OFFICER:  Mr. Blair, do you have anything

1     that you'd like to ask?

2             MR. BLAIR: I'd just like to interject a brief  
3     history here of what has transpired. I became the officer  
4     on this case, I believe July of this year. Prior to that  
5     several attempts to gain restitution information were made  
6     by several other parole officers are all documented in the  
7     file. Contact was made with the victim. However, amounts  
8     were not gained, therefore no restitution amount was made.  
9     I attempted to reach her just before requesting this case  
10    be legislatively terminated and was unable to do so. But  
11    the most recent contact with the victim was in January, or  
12    excuse me, that would have been December of 1995. At that  
13    time she did not supply any information to the officer  
14    regarding restitution information, therefore he was unable  
15    to determine any type of restitution.

16            During my supervision Mr. Schultz has been  
17    compliant with the terms of parole, obviously, and I've had  
18    no problem with him.

19            HEARING OFFICER: That is certainly a concern  
20    that the victim waited this long to submit restitution when  
21    several attempts were made by Adult Probation and Parole to  
22    gain that.

23            And to answer your comment, Mr. Schultz, as to  
24    why we waited this long is simply because the Board didn't  
25    know what amounts, if any, were and this is why this

1     restitution hearing has been convened at your request, of  
2     course. But one of the issues here is that we were not  
3     affording you due process, this is why we have this hearing  
4     is to afford you that process, sir.

5             THE WITNESS: I understand.

6             HEARING OFFICER: Anything else that anyone else  
7     has?

8             THE WITNESS: My contention is right up front, I  
9     am paying no restitution regardless of the outcome of this  
10    hearing. If you wish to pursue the matter beyond midnight  
11    tomorrow night when my termination is supposed to take  
12    effect you can have him take me into custody and take me  
13    back into the prison.

14            HEARING OFFICER: Sir, you better reconsider what  
15    you say.

16            THE WITNESS: There is no reconsideration.

17            HEARING OFFICER: That is certainly an option to  
18    be taken, okay? Because my initial thought was to take  
19    this matter under advisement so that the Board can gather,  
20    you can submit all evidence and the Board can make a  
21    ruling. But if you are not taking--let me warn you that if  
22    you do not take responsibility for your actions then  
23    certainly you will be in violation of your parole terms and  
24    that is an option. The Board can issue a warrant. We can  
25    detain you right now and the Board will issue a warrant,



1     okay? I'm just warning you.

2                 THE WITNESS: I've put up with to much shit from  
3     you people. I've done twice the matrix on this crime  
4     lacking 35 hours. I've completed three years of parole.

5                 HEARING OFFICER: Would you like to talk to him  
6     before I make the rule?

7                 MR. BOWEN: Yes, let me do so.

8                 Mr. Escobar, let me also point out that it seems  
9     to me that there are certain statutory requirements even  
10    assuming that this Board has the authority to impose  
11    restitution which we do not recognize, but nevertheless, if  
12    it does there are statutory requirements in the Utah Code.  
13    Specifically I would site 76-3-2013(b) and 77-27-62 which  
14    requires certain things to occur in a restitution hearing.  
15    One on which it seems to me is the presence of the victim  
16    to testify and be subject to cross-examination concerning  
17    the amount of the claim. Now since none of that has  
18    occurred today it appears to me that this Board has no  
19    other choice but that to deny any request for restitution  
20    and to dismiss the hearing because there's no evidence in  
21    front of the Board.

22                 HEARING OFFICER: First of all, the victim was  
23    notified with ample time. The victim has been in  
24    telephonic communications with the Board and the victim,  
25    for whatever reason, is not present and I hear your

1 comment, your motion. Based on that, that is why I was  
2 going to continue this matter and take it under advisement  
3 and appraise the Board of the fact that the victim chose  
4 not to attend this meeting.

5 Q (BY HEARING OFFICER) Mr. Schultz, do you still  
6 have that desire to be taken in?

7 MR. BOWEN: No, he doesn't. He's upset. When  
8 you see the light at the end of the tunnel and it's getting  
9 brighter and brighter it's a little difficult to have to  
10 come back here this close--

11 HEARING OFFICER: I, sir, do not think it would  
12 be necessary but if you do want too I can order him to take  
13 you right in.

14 THE WITNESS: I truthfully, for me this is not a  
15 moral issue, this is a legal issue and I do not believe I  
16 legally owe this amount.

17 HEARING OFFICER: I have taken your statements  
18 into consideration, sir, and I will certainly appraise the  
19 Board of your desire not to pay restitution based on the  
20 issues that your attorney has raised.

21 I will take this matter under advisement and, Mr.  
22 Schultz, you will be notified of whatever decision the  
23 Board makes.


24 MR. BOWEN: Thank you.

25 (Whereupon the hearing was concluded.)

CERTIFICATE

I HEREBY CERTIFY that the foregoing transcript in the above mentioned hearing held before the Board of Pardons on October 23, 1996 was transcribed from the an duplicated audio tape, and is a full and complete transcription contained in pages 3 through 28, inclusive, to the best of my ability.

Signed this 16th day of March, 1997 in Sandy, Utah.

  
Carolyn Erickson  
Certified Shorthand Reporter  
Certified Court Transcriber

My Commission expires May 4, 1998

# ADDENDUM L

## “Restitution”

# BOARD ACTION ROUTING SLIP

## RESTITUTION

NAME: JOSEPH B. SCHULTZ USP # 17875

DATE: 4-24-97 OBSCIS # 12599

STATUS: Rehearing \_\_\_\_\_ Parole 10-26-93 Other TERM. 10-25-96

### COMMENTS AND RECOMMENDATIONS:

*My recommendation for restitution of \$3,798<sup>45</sup> is based on victim's request for:*

- ① Medical card from Social Service \$ 100.00
- ② Eye prosthetics cleaning & polishing \$ 142.45
- ③ Medication for related injuries \$ 502.25
- ④ Medical bills for related injuries \$ 507.76
- ⑤ Loss of 1978 Pinto Wagon \$1,300.00
- ⑥ Estimate eye prosthesis replacement \$1,246.97 \*

\* Life of a prosthetic eye is estimated at 8 years - the victim has been wearing a 13 year old prosthetic eye at the time (9/27/96).

### ROUTING RESULTS

DATE <u>8-4-97</u>	DATE <u>8/4/97</u>	DATE <u>8/4/97</u>	DATE <u>8/4/97</u>	DATE
AGREE	AGREE <u>CL</u>	AGREE <u>CL</u>	AGREE <u>mmh</u>	AGREE
DISSENT	DISSENT	DISSENT	DISSENT	DISSENT